

To: Ralph Hilliard, Planning Manager
From: John Wachtel, Neighborhood Planning Coordinator
Date: December 16, 2004
Subject: Family Child Care Homes and Large Family Child Care Homes

There are two distinct regulatory concerns related to *family child care homes* and *large family child care homes* – zoning and licensure. Local zoning regulations must comply with State statute, but can differ from Alachua County Code. Licensure, on the other hand, is governed by the local licensing agency, the Alachua County Health Department. Under Florida's child care law [§402.301-319, Florida Statutes], the local licensing agency is permitted to exceed State licensing standards [Chapters 65C-20, 65C-22 and 65C-25, Florida Administrative Code].

1) State of Florida Regulations – Family Child Care Homes

Section 166.0445, Florida Statutes, is written to supercede local prohibition of family day care homes in a residential area; this section of statute provides: "The operation of a residence as a *family day care home*, as defined by law, registered or licensed with the Department of Children and Family Services shall constitute a valid residential use for purposes of any local zoning regulations, and no such regulation shall require the owner or operator of such *family day care home* to obtain any special exemption or use permit or waiver, or to pay any special fee in excess of \$50, to operate in an area zoned for residential use." (Section 125.0109, F.S., is the companion legislation for counties.)

Subsection 402.302(7), Florida Statutes (FS), defines a *family day care home* as "an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit. A *family day care home* shall be allowed to provide care for one of the following groups of children, which shall include those children under 13 years of age who are related to the caregiver:

- (a) A maximum of four children from birth to 12 months of age.
- (b) A maximum of three children from birth to 12 months of age, and other children, for a maximum total of six children.
- (c) A maximum of six preschool children if all are older than 12 months of age.
- (d) A maximum of 10 children if no more than 5 are preschool age and, of those 5, no more than 2 are under 12 months of age.

State statute only requires the family day care home to be an occupied residence, it does not speak to licensee occupancy, nor does it address property owner occupancy. In contrast, the local licensing agency, the Alachua County Health Department, requires licensee occupancy of these homes. The Alachua County Health Department also exceeds State licensing requirements for the maximum number of children cared for in a family child care home.

2) State of Florida Regulations – Large Family Child Care Homes

“Large family child care home means an occupied residence in which child care is regularly provided for children from at least two unrelated families, which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit, and which has at least two full-time child care personnel on the premises during the hours of operation. One of the two full-time child care personnel must be the owner or occupant of the residence. A large family child care home must first have operated as a licensed family day care home for 2 years, with an operator who has had a child development associate credential or its equivalent for 1 year, before seeking licensure as a large family child care home. A *large family child care home* shall be allowed to provide care for one of the following groups of children, which shall include those children under 13 years of age who are related to the caregiver:

(a) A maximum of 8 children from birth to 24 months of age.

(b) A maximum of 12 children, with no more than 4 children under 24 months of age.” Subsection 402.302(8), Florida Statutes.

While Chapters 125 (for counties) and 166 (municipalities), Florida Statutes, clearly regulate family day care homes, both are silent to zoning requirements for *large family child care homes*, allowing local zoning laws to prevail.

Note: The Alachua County Health Department requires licensee occupancy of large family child care homes, which exceeds State requirements.

3) Alachua County Regulations

Alachua County Code was amended in June 2004, to reflect changes to state law regarding child care homes. In Sections 67.02 (Definitions) and Section 67.33 (Personnel), the county incorporates the state’s definitions of family day care and large family child care homes into its Child Care Ordinance. In the case of family day care homes, the county’s language is more restrictive than the state’s. The following has been excerpted from Alachua County Code, as referenced:

Section 67.02. Definitions.

Family child care home means the licensee's residence in which child care is regularly provided for children from at least two unrelated families, but excludes large family child care homes.

Home means both family child care home and large family child care home.

Large family child care home means the licensee's residence in which child care is regularly provided for children from at least two unrelated families which is licensed to care for a greater number of children than allowed for a family child care home.

Preschool age means any child not enrolled in, or not eligible to be enrolled in public kindergarten through 12th grade. Children enrolled in Head Start at a public school shall be considered preschool age.

Section 67.30. Licensing.

(1) All family child care homes and large family child care homes, as defined herein, shall be licensed. The licensee shall apply to the local licensing agency for licensing and shall comply with sections 67.31 through 67.39 of this chapter. The local licensing agency shall only issue a license to an applicant who has passed all screening requirements.

Section 67.33. Personnel.

(b) *Maximum number of children.*

(1) A family child care home shall be allowed to provide care for one of the following groups of children, which shall include those children under 13 years of age who are related to the care giver:

(a) A maximum of four children from birth to 24 months;

(b) A maximum of six children when at least three of the children are over 24 months;

(c) A maximum of six children over 24 months;

(d) A maximum of eight children if no more than five are preschool age, and of those five, no more than three are under 24 months, and of those three no more than two are under 12 months;

(e) a maximum of ten children over 24 months of age, if no more than five are preschool age.

(2) A large family child care home shall be allowed to provide care for one of the following groups of children, which shall include those children under 13 years of age who are related to the care giver:

(a) A maximum of eight children from birth to 24 months of age;

- (b) A maximum of twelve children, with no more than 4 children under 24 months of age.

In June 2004, Alachua County amended its zoning language to comply with Section 125.0109, F.S. The following definitions from the Alachua County Unified Land Development Code, Part III, Title 39, Zoning, defer to the County's licensure requirements:

Family Child Care Home: A residence licensed by the local licensing agency in which child care is regularly provided for children from at least two unrelated families but excluding large family day care homes.

Large Family Child Care Home: A residence licensed by the local licensing agency in which child care is regularly provided for children from at least two unrelated families that is licensed to care for a greater number of children than allowed for in a family child care home.

County Code now includes zoning provisions for *large family child care homes*; they are permitted by right wherever family child care homes are permitted by right.

It should be noted that the County uses *family child care home* in place of *family day care home* which is the language still used by the state. *Child care* is more precise terminology than *day care*, since *day care* also applies to adult care facilities. Additionally, the County distinguishes between child care centers (*family child care* and *large family child care homes* are not included) and child care facilities (applies to both classes of child care homes). Implementing these language changes would mean reviewing Chapter 30 in its entirety to ensure consistency.

4) City of Gainesville Regulations

Gainesville's Land Development Code does not reflect State regulatory changes regarding *family day care homes* and *large family child care homes*. At this time there is no language regarding *large family child care homes* in City ode.

Currently Gainesville Code, Section 30-23 defines a *family day care home* as "an occupied residence in which child care is regularly provided for no more than five preschool children from more than one unrelated family and which receives a payment, fee or grant for any of the children receiving care, whether or not operated for profit. The maximum number of five preschool children includes preschool children living in the home and preschool children received for day care who are not related to the resident caregiver. Elementary school siblings of the preschool children received for day care may also be cared for outside of school hours provided the total number of children, including the caregiver's own and those related to the caregiver, does not exceed ten. Such uses shall not include nursing and personal care facilities, schools, rehabilitation centers, social services homes or halfway houses, or other similar activities or facilities which are not customarily incidental to residential use. "

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(d) A maximum of eight children if no more than five are preschool age, and of those five, no more than three are under 24 months, and of those three no more than two are under 12 months;

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The City's current zoning code is adequate where it defers to state law regarding *family day care homes*. In RSF1-4, RMF6-8, MH, RMU and RH1-2, *family day care homes* are permitted by right, "in accordance with the conditions and requirements of state law". In RMF5 and RC, they are permitted "in accordance with the conditions and requirements of Section 30-247.1" (which does not appear to exist). In MU1 they are permitted by right, "when part of a permitted single-family or multifamily residential component and in accordance with state law". It should be noted that MU2 is silent to these homes.

5) Recommendations

- The City should utilize the term *family child care home* instead of *family day care home*.
- In Chapter 30 of the City of Gainesville's Land Development Code, the definitions of *family child care home* and *large family child care home* should read: As defined in Section 402, Florida Statutes (FS).

Caveat: If City code defers to F.S. Section 402, it will differ from County code which might be confusing for operators of these facilities, since their facilities will be licensed in compliance with the County's Child Care Ordinance.

- The City should elect to restrict the zoning of large family child care homes to some extent. Some possibilities include allowing them only in multifamily zones either by right or as a special use, and/or allowing them by special use permit in single family districts. A special use permit could be conditioned upon a specified separation distance between similar operations.

At this time there are no licensed *large family child care homes* in Alachua County, but that will change now that local licensing language allows them. Since 81 of the 112 family child care homes depicted on the attached map are located within City limits, it is likely most *large family child care homes* would also be sited within City limits.

- The City should consider requiring facility licensees to provide the property owner's written acknowledgement of a site's use as a child care home. Such documentation would be collected by either the City for occupational licensure or by the Health Department, whichever would have legal authority to do so. Further research is necessary to determine whether this requirement would violate State statute.

Family Child Care Homes

